

**OCR June 30, 2015, 8:00 a.m. Interview with Talia Buford, CPI
& Amber Payne, NBCBLK**

CPI'S ANGLE: Discuss how OCR is addressing complaints (including pending since 1990s), challenges the office faces, changes made in light of the Deloitte report, and give the agency a chance to respond to criticisms. How OCR plays into EPA's commitment to EJ, OCR's role in EPA's EJ 2020 plan, which is currently open for public comment. Specific Requests involve the Angelita C. complaint (16R-99-R9); Syracuse, NY (03R-04-R2); Roswell/Tatum, NM (09R-02-R6); and Uniontown, Ala. (12R-13-R4).

Approach: Forward looking and proactive

Acknowledge that in the past, cases were not processed as quickly as EPA and OCR wished.

Request clarification, if needed.

Note: OCR has four programs – External Compliance, EEO/Title VII, Reasonable Accommodations and Affirmative Employment, Analysis and Accountability.

Note: External Compliance Program is responsible for enforcing five laws – Title VI of the Civil Rights Act of 1963, Section 504 of the Rehabilitation Act of 1973; Title IX of the Education Amendments, Age Discrimination Act of 1975; and Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits against sex discrimination.

MAJOR SUCCESSES TO HIGHLIGHT THROUGHOUT THE INTERVIEW

- **REVISED EPA FORM 4700-4**
- Developed the Title VI terms and condition for pre-award to ensure compliance with Title VI
- Developed Title VI compliance language for inclusion in the **EPA NATIONAL PROGRAM MANAGER GUIDANCE**.
- Significant Progress on EPA's **LIMITED ENGLISH PROFICIENCY INITIATIVE**
- **Implemented STRATEGIC CASE PLANNING** to address OCR's complaint docket and ensure new complaints are processed **promptly, thoroughly and effectively**
- Currently developing a **POST-AWARD COMPLIANCE TOOLKIT** to assist EPA recipients in understanding their obligations under Title VI, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972.
- Currently developing a **COMPREHENSIVE CASE RESOLUTION MANUAL**: OCR is developing a Case Resolution Manual to assure that all cases are processed in a consistent, **prompt, thorough, and effective** manner. The Case Resolution Manual, which is expected to be in draft for internal circulation by June 2015. Once finalized, will be posted on OCR's public website to promote transparency.
- OCR has also released a policy paper entitled "**ISSUE PAPER ON THE ROLE OF COMPLAINANTS AND RECIPIENTS IN THE CIVIL RIGHTS COMPLAINTS AND RESOLUTION PROCESS**" to clarify complainants and recipients participation in the civil rights complaint and resolution process, including Title VI complaints. Specifically, the policy clarifies existing practices and identifying opportunities for greater participation within that framework.

INTERVIEW PARAMETERS:

- 20 minute on-the-record interview (with option to extend 10 minutes).
- We will not discuss specific cases.
- We will discuss OCR responsibilities, accomplishments, and steps we are pursuing to move forward.
- *Velveta opens discussion* with few facts about her background, EPA start date, OCR's mission - beyond Title VI.

Preparation Q&As

Q1: What is office doing to address complaints today?

Response:

- The U.S. Environmental Protection Agency's (EPA's) Office of Civil Rights (OCR) is responsible for enforcing several Federal civil rights laws that together prohibit discrimination on the bases of race, color, national origin (including limited-English proficiency), disability, sex and age in programs or activities that receive Federal financial assistance (FFA) from EPA.
- The EPA has made improving its civil rights compliance program a priority, including its enforcement of Title VI of the Civil Rights Act of 1964 (Title VI). Title VI prohibits discrimination based on race, color and national origin (including limited-English proficiency) to ensure that EPA FFA recipients conduct programs and activities free of discrimination.
- While the EPA recognizes that there is much to do, EPA is taking many steps 1) to strategically develop the agency's infrastructure regarding recipient compliance; and 2) to identify better ways to collaborate with its stakeholders, including governmental, community and industry stakeholders to carry out its civil rights work.

- The EPA has made many programmatic strides towards building a model civil rights program, including:
 - Just this past week OMB approved a revised EPA Form 4700-4, which now makes it clear that pre-award review and approval of grant applications are contingent on applicants answering all questions on the form when they certify compliance with all applicable civil rights statutes and EPA regulations.
 - Previously, EPA's pre-award form allowed applicants discretion in answering questions related to their civil rights obligations. Obviously, this was not acceptable and EPA removed all uncertainty about recipients' civil rights obligations to catalyze an external shift among states and other recipients to ensure compliance.
 - The EPA issued EPA Order 4700, which established the position of Deputy Civil Rights Officials (DCROs) in each program office and region. DCROs are senior career officials, such as deputy assistant administrators, who are responsible for ensuring accountability and improving the coordination of civil rights policies and initiatives. DCROs and OCR are working together to make progress in resolving the open cases on the Title VI case docket.
 - The EPA has developed Title VI compliance language that was included in the EPA's National Program Management guidance in FY 2013, 2014, and 2015 performance partnership agreements and performance partnership grants.
 - The EPA added a new term and condition to all domestic grant awards made on, or after, January 23, 2013, that clarifies recipients' obligations to comply with Title VI.

- The EPA has made considerable efforts to communicate with, and solicit input from, state recipients, industry, Title VI advocacy organizations and other stakeholders on Title VI compliance.
 - Over the past 16 months, the EPA has met with various state representatives and the Environmental Council of States on several occasions to discuss performance partnership agreements, performance partnership grants and how recipients can meet their Title VI obligations.

Roles of Complainants and Recipients in Complaint Resolution Process

- As engagement of stakeholders is essential to improving compliance outcomes, the OCR is committed to providing complainants and recipients with opportunities to participate in the complaint resolution process. Complainants and recipients are typically a primary source of information for the OCR throughout the complaint resolution process.
- Finally, in appropriate cases, the OCR will engage in informal resolution with recipients or may offer complainants and recipients an opportunity to participate in Alternative Dispute Resolution (ADR) concerning the matters raised in the complaint.
- My overarching goal to ensure that OCR promptly, thoroughly, and effectively resolve civil rights complaints. Since I came on board, OCR has enhanced its focus on using all forms of case resolution options, including informal resolution and alternative dispute resolution, etc.

Q2: Why does everything take so long?

Response: We, at EPA, share your concerns, and we recognize that there are real needs out there. EPA is strengthening its Civil Rights foundation to build a sustainable future.

- We are also establishing concrete strategies and processes to ensure that at all stages of the complaint process, each complaint will be resolved in a prompt, thorough, and effective manner.
- First, consistent with Federal best practices, OCR is developing a Case Resolution Manual and we expect to complete a draft for internal circulation by the end of this summer. Once finalized, the manual will be posted on OCR's public website to promote transparency.
 - The manual will outline procedures for addressing all phases of the Case Resolution Process, including complaints and compliance reviews. It will include model documents, plans and other standard operating procedures for staff to improve efficiency. Also, it will establish milestones for ensuring the prompt and thorough processing of cases.
- Additionally, OCR is developing a 5-year strategic plan that identifies and prioritizes case processing, earlier informal resolution, and compliance program goals, including a set of metrics to annually measure progress towards meeting each goal. The strategic plan will include key recommendations on how to build and address capacity within OCR.

Q3: Can you tell me about your personal Civil Rights history?

Response: I am a civil rights advocate who has worked in the field at the federal level for the past 25 years. I'm licensed to practice law and have a graduate degree in public administration. I'm an experienced leader and manager. I joined the federal government to serve as a civil rights attorney and did so for 9 years before becoming a Regional Civil Rights Manager for the Department of Health and Human Services. Over my tenure, the Regional Office that I led became a model one. My staff and I identified and used innovative practices to ensure prompt, thorough and effective case resolutions. We also built collaborative partnerships with many organizations that, through synergy, allowed the partnerships to achieve many accomplishments. In addition, we developed and implemented robust compliance, public outreach and technical assistance programs through which we trained recipients on their civil rights obligations and created pathways that prevented legally proscribed discrimination from occurring.

Q4: Can you highlight OCR accomplishments since you took over leadership at EPA?

Response: Thank you for this opportunity to share a few of our accomplishments.

- **Established the DCRO network**
- **Created a protocol which utilizes the expertise of committed professionals throughout EPA to resolve complex cases and formulate policy**
- **REVISED EPA FORM 4700-4** and developed the Title VI terms and condition for pre-award to ensure compliance with Title VI
- **Developed Title VI compliance language for inclusion in the EPA NATIONAL PROGRAM MANAGER GUIDANCE**
- **Significant Progress on EPA's LIMITED ENGLISH PROFICIENCY INITIATIVE**
- **Currently developing a STRATEGIC CASE ASSESSMENT PLAN** to address OCR's complaint docket and ensure new complaints are processed promptly, thoroughly and effectively
- **Currently developing a POST-AWARD COMPLIANCE TOOLKIT** to assist EPA recipients in understanding their obligations under Title VI, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972.
- **Currently developing a COMPREHENSIVE CASE RESOLUTION MANUAL** to ensure all cases are processed in a consistent, **prompt, thorough, and effective** manner
- **Recently released a policy paper** entitled, **"ISSUE PAPER ON THE ROLE OF COMPLAINANTS AND RECIPIENTS IN THE CIVIL RIGHTS COMPLAINTS AND RESOLUTION PROCESS"** to clarify complainants and recipients' participation in the complaint and resolution process, including Title VI complaints. The policy clarifies existing practices and identifies opportunities for greater participation

Q5: What is your vision?

Response: In the next 5 years, my vision is that OCR will have made significant strides towards its goal of promptly, thoroughly and efficiently addressing each complaint it receives. It will use various tools, including informal resolution and ADR to resolve complaints and will have a well-established process for conducting compliance reviews to ensure recipients' compliance with the laws enforced. OCR will have a fully implemented public outreach and technical assistance program through which it continually educates recipients on their civil rights obligations and how to meet those obligations. OCR will have established sustained collaborations with all of its stakeholders which facilitates an effective Civil Rights program. It will work with other federal Civil Rights agencies to accomplish common goals and objectives.

Q6: Can you help us better understand OCR caseload, reasons for backlog, barriers to closing cases, and budget?

Proposed Response: Each complaint must be reviewed on a case-by-case basis. No two are alike and each presents a unique set of circumstances. Often, the issues are complex and EPA's technical experts must be consulted. At EPA, there is a commitment at all levels to work towards strengthening the Civil Rights program, and this commitment begins with EPA Administrator Gina McCarthy.

- While I can't speak to specific reasons why a backlog occurred, I can tell you what affirmative steps OCR is taking to eliminate it. These include strategic action planning, developing tools that OCR staff can use to assess and resolve complaints, and the establishment and maintenance of collaborative partnerships throughout OCR to address complaints over which OCR has jurisdiction.

Q7: What is the current number of discriminations complaints being investigated by your office?

Response: OCR has received 52 Title VI complaints over the past three years (14 complaints were filed this fiscal year, 20 were filed last fiscal year, and 18 were filed in FY 2013. In the past three years, OCR resolved 28 cases which equals 54% of the cases received. OCR currently has 40 complaints pending. These include jurisdictional reviews and open investigations.

Q8: How many investigators do you have pursuing these complaints?

Response: Thank you for your question. I would like to take this opportunity to share that OCR has a broad mission. OCR is responsible for carrying out four mission-critical programs. Three of these affect EPA's workforce, including: 1) the processing, and resolution of discrimination complainants filed by EPA employees and applicants for employment; 2) overseeing and coordinating EPA's Reasonable Accommodations Program for employees with disabilities; and 3) identifying and eliminating barriers to equal employment.

- OCR is also responsible for enforcing several federal civil rights laws that together prohibit discrimination on the bases of race, color, national origin (including limited-English proficiency), disability, sex and age, in programs or activities that receive federal financial assistance (FFA) from EPA.

EPA has built a network of professionals throughout the organization who are charged with strengthening the Civil Rights program. These include Deputy Civil Rights Officials and professional staff.

Q9: What is your expectation of the length of time it will take your office to investigate your current backlog of complaints?

Response: Thank you the opportunity to share with you on what we've been working. While no 2 cases are alike, we are establishing clear strategies and processes to ensure that at all stages of the complaint process, all complaint will be resolved in a prompt, thorough, and effective manner. My vision over the next 5 years is that OCR will have a vibrant Civil Rights program that uses different methodologies to resolve complaints, including informal resolution and ADR, practices and procedures to expeditiously move complaints over which OCR has jurisdiction to resolution, a strong educational programs that promotes recipients' compliance and prevents legally proscribed discrimination from occurring.

Q10: Why has, in the 23 years of investigating Title VI complaints, the EPA not once found a formal Title VI violation?

Response: Having been with the Agency for only 16 months, I am not in a position to answer this question. However, I can assure you that OCR is making every effort to resolve complaints as quickly as possible while still conducting a meaningful assessment of each. Those efforts include:

- o Consistent with the Executive Order, ongoing consultation and coordination with the Justice Department on novel legal issues that arise in cases, and
- o Full utilization of all resolution options that are available to OCR, including informal resolution and Alternative Dispute Resolution.
- o Strategic management of all cases through the use of a newly-established comprehensive case and document management system.
- o Development of a comprehensive Case Resolution Manual consistent with federal best practices, to ensure that all cases are processed in a consistent, effective, and efficient manner. This manual, which OCR is working to complete this summer will include:

- Procedures for addressing all phases of the case resolution process, including complaints and compliance reviews;
- Target timeframes for ensuring timely and effective processing of cases, particularly within the first 90 days after their receipt; and
- Model letters, plans, and other standard operating procedures for staff to use in processing complaints.

Q11: What is the office's rationale and methodology in assessing EJ/Title VI complaints?

Response:

Velveta: OCR partners with the OEJ on a number of initiatives; however I would like to note that the OEJ operates under an Executive Order 12898, which generally calls on each federal agency to achieve environmental justice. It really applies only to federal agency action, including the EPA's. Title VI on the other hand is a statute which has an implementing regulation that prohibit FFA recipients from discriminating based on race, color and national origin. They do not apply to federal agency action, but rather to recipients of federal financial assistance to ensure that such assistance does not subsidize discrimination. Jennifer or Monica can arrange an interview with Matt Tejada. Director of the Office of Environmental Justice, if you have questions about EJ.

Jennifer and Monica's contribution: Here is the link to the EJ page ([URL here](#)). EJ and OCR are similar issues. We have created more dialogue between the EJ and OCR offices. We are integrating EJ and OCR into EPA, as a whole. The biggest distinction between EJ and OCR is that Civil Rights is a legal obligation, while EJ issues should be addressed, but are not covered by a statute.

To address civil rights concerns identified in the EO 12898, EPA's OCR developed a "Title VI Supplement to Plan EJ 2014" OCR committed to four strategies: Establishing a robust Title VI pre-award and post-award compliance program, partnered with other federal agencies, and advanced limited English proficiency initiatives. All of this translates to EPA's commitment to ensure no one is denied EPA support for any federal activity.

Q12: What is the office's response to criticisms leveled at it by environmental justice advocates and citizens who say the EPA does little to protect communities of color that have filed Title VI complaints?

Response: Thank you for that question. Since becoming the director of OCR, I've had a number of opportunities to meet with stakeholders, including advocates who have expressed a number of concerns. I will continue to engage with all stakeholders as we work to build EPA's model civil rights program.

I would note that on May 4th, OCR issued the *Role of Complainants and Recipients in the Title VI Complaint and Resolution Process* policy paper. This policy paper discusses approaches that OCR may employ during the Title VI investigative process.

- The policy paper's purpose is to clarify the participatory roles of the complainant and recipient. The policy paper clarifies EPA's intent, in appropriate cases, to seek input from complainants and other relevant stakeholders in order to gather sufficient information to advance its investigation or to evaluate the best means of resolving a complaint.

Q13: What are the challenges the office faces in executing its mission?

Response: EPA is committed to building a model civil rights program, which includes strengthening OCR and the External Compliance program. As we put in place the strong foundation necessary to support an effective compliance and enforcement program, I have personally seen the CULTURE SHIFT that is occurring at EPA. I see EPA as an Agency coming together to support its goal of having a model Civil Rights program. I view what some would call challenges as opportunities. Here, at EPA, we are taking advantage of those opportunities while seeking to make a visible difference in communities.